

Council 11/2/05 Approves Canadian Drug Bill

Montgomery Effort To Cut Costs Raises Risk of Legal Action

By TIM CRAIG
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The Montgomery County Council approved a bill yesterday requiring officials to give county employees the option to purchase lower-cost prescription drugs from Canada — or anyplace else they can find a good deal.

The bill was approved despite continued warnings from the U.S. Food and Drug Administration that the county was on the verge of violating federal law and risked being sued.

The proposal, which affects 12,500 county employees and retirees, requires County Executive Douglas M. Duncan (D) to participate in a program established by the council last year.

"We will be a leader on the issue on securing safe, low-cost prescription drugs on the behalf of our citizens," said County Council President Tom Perez (D-Silver Spring), the lead sponsor of the legislation.

Before the council vote, the FDA dispatched a top official to reiterate the agency's position that drugs from foreign sources are neither safe nor legal.

Thomas J. McGinnis, the FDA's director of pharmacy affairs, said the

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council was putting employees and taxpayers at risk.

"If someone gets hurt, the county may very well be liable," McGinnis said. "It could bankrupt the Montgomery County government."

But the council rushed ahead and approved the bill 6 to 2, holding a hearing and a final vote on the same day. The unusual move signaled council members' frustration that their earlier efforts to establish a Canadian drug program were hampered by Duncan and other county officials.

In September, the council approved a resolution calling for a program to allow 85,000 employees, retirees and dependents who receive taxpayer-funded health care to obtain Canadian drugs.

The council contracted with Canusa, a privately held health benefits company based in Windsor, Ontario, to obtain and distribute the drugs.

But the program has struggled to get off the ground, in large part because of the reluctance of county officials to blatantly snub the FDA, which is based in Rockville.

Duncan decided he would first seek a waiver from the FDA allowing the county to import Canadian drugs. The agency has never issued any such waiver. The stance opened him up to charges that he was trying to dodge the issue.

"I think the county executive is seeking an answer to a question he already knows the answer to," said Robert A. Stewart, a lobbyist for the Municipal & County Government Employees Organization, which supported Perez's proposal. "For whatever reason, this is an uncomfortable issue for him."

Last month, the county school board, at the urging of Superintendent Jerry D. Weast, declined to participate, mainly because of concerns that the action would violate

federal law. The board, which has jurisdiction over 27,000 employees, said it would reconsider if the county received an FDA waiver or if the Duncan administration acted first.

Although the council bill applies only to county government employees and retirees, Perez hopes that the school system, the planning agency, Montgomery College and the Washington Suburban Sanitary Commission will follow.

David Weaver, a Duncan spokesman, said the administration is still hoping to get a waiver from the federal government, though it has yet to hear a response. If it does not get one, Weaver said, the administration "will work with the council to implement the law."

Board of Education President Patricia O'Neill (Bethesda-Chevy Chase) said the council's decision, absent an FDA waiver, will not have an impact on whether the school system moves forward.

"The board was very clear on this. We were going to be a follower, not a leader," she said.

Beyond the legal considerations, some policymakers note that the economics of the issue have changed during the past year.

Last fall, council members said the program could save taxpayers \$15 million to \$20 million. Since then, some have suggested that the actual savings could be as little as \$1 million.

Canadian officials have also said they are going to restrict the flow of drugs to the United States.



County Executive Douglas M. Duncan wants an FDA waiver.